

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

ELIZABETH STEFFENBERG,

Plaintiff,

v.

T. GENE GILMAN, STEVEN GILMAN, THE GILMAN
INSURANCE AGENCY, INC., DAVID M. SCOLL,
ARBOR SECURITIES, LTD., ALLIANCE
INVESTMENT MANAGEMENT, COMMONWEALTH
FINANCIAL HOLDINGS INC., FINANCIAL LINKS,
INC., T. GILMAN & CO., LTD., FIRST ALLIED
SECURITIES, INC., PENSON FINANCIAL SERVICES,
INC., AVIVA LIFE INSURANCE COMPANY,
TRADETEK, LTD. and TRADETEK, LLC,

Defendants.

CIVIL ACTION NO. 04-40113-
FDS

**MOTION OF THE DEFENDANT, DAVID M. SCOLL,
DIRECTED TO THE MAGISTRATE JUDGE,
FOR AN ORDER STAYING THE MAGISTRATE ORDER DATED MAY 25, 2005**

NOW comes the Defendant, David Scoll (hereinafter "Scoll"), and pursuant to Rule 2(c) of the Rules for United States Magistrate Judges in the United States District Court for the District of Massachusetts (hereinafter "Magistrate Rules") and Rule 7.1 of the Local Rules of the United States District Court for the District of Massachusetts, hereby moves Magistrate Judge Swartwood for a stay of his Magistrate Order dated May 25, 2005. In support hereof, Attorney Scoll states:

1. The Magistrate Order dated May 25, 2005 compels Attorney Scoll to either produce documents heretofore withheld or provide information showing the basis of the privileged nature of the documents withheld by June 13, 2005. See Order Dated May 25, 2005.

2. The production of said documents would result in the disclosure of information that is protected by applicable privileges as well as client confidentiality requirements under ethical rules applicable to Attorney Scoll as an attorney.
3. The disclosure of information supporting the privileged nature of the withheld documents would itself result in Attorney Scoll revealing information which is privileged and also protected by applicable client confidentiality rules.
4. The Magistrate Judge has scheduled a hearing on June 13, 2005 by which time Attorney Scoll will be required to provide, at a minimum, such additional information.
5. Attorney Scoll is herewith filing his Objections to the Magistrate Order dated May 25, 2005 on the basis, *inter alia*, that the Court exceeded its powers in referring the Plaintiff's Motion for Reconsideration to the Magistrate Judge for reconsideration of his prior Order dated December 28, 2004.
6. The forced disclosure of information, which is both privileged and protected by client confidentiality rules, by June 13, 2005 may permanently prejudice Attorney Scoll if the district court does not consider his Objections prior thereto.
7. As a result, Attorney Scoll seeks a stay of the Magistrate Order dated May 25, 2005 from Magistrate Judge Swartwood until such time as the district court has an opportunity to consider his Objections thereto. See Mag.R. 2(c)("Any party desiring a stay of a magistrate judge's ruling or order, or any part thereof, pending ruling on objections filed under subsection (b) hereof, must first apply therefor to the magistrate judge from whose ruling the objection is taken.").
8. Counsel for the Plaintiff does not oppose Attorney Scoll's motion to stay the Magistrate Order dated May 25, 2005.

Respectfully submitted,

DAVID M. SCOLL

By his Attorneys,

/s/ Sara Discepolo

George C. Rockas, BBO # 544009

Sara Discepolo, BBO # 628721

WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER LLP

155 Federal Street

Boston, MA 02110

(617) 422-5300

Dated: June 3, 2005

RULE 7.1 CERTIFICATION

I hereby certify that, pursuant to Local Rule 7.1(A)(2), I have conferred with Plaintiff's counsel in a good faith attempt to narrow or resolve the issues and Plaintiff's counsel does not oppose this Motion.

/s/ Sara Discepolo

Sara Discepolo

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CERTIFICATE OF SERVICE

I, Sara Discepolo, hereby certify that on June 3, 2005, I electronically filed the foregoing *Motion of the Defendant, David M. Scoll, Directed to the Magistrate Judge, for an Order Staying the Magistrate Order Dated May 25, 2005* and caused to be served a courtesy copy of the same to all parties/counsel of record by mailing the same via first class mail, postage prepaid, to the following parties:

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/s/ Sara Discepolo
Sara Discepolo